U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 10 February 2005

CASE NO.: 2004-LHC-00820

OWCP NO.: 01-157978

In the Matter of

RICHARD VALERIANA
Claimant

v.

ELECTRIC BOAT CORPORATION
Employer/Self-Insured

Appearances:

Scott N. Roberts, Groton, Connecticut,
for the Claimant

Edward W. Murphy (Morrison, Mahoney & Miller),
Boston, Massachusetts, for Electric Boat Corporation

Before: Daniel F. Sutton
Administrative Law Judge

DECISION AND ORDER AWARDING BENEFITS

I. Statement of the Case

This proceeding arises from a claim for worker's compensation benefits filed by Richard Valeriana (the "Claimant") against the Electric Boat Corporation ("EBC") under the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. § 901, *et seq*. (the "LHWCA"). The Claimant has worked for EBC and its parent company, the General Dynamics Corporation ("GD") at shipbuilding facilities since 1967. He developed degenerative osteoarthritis in his knees and had a total replacement of the left knee joint in 2003. He was out of work for about six months following the replacement surgery and seeks an award of temporary total disability compensation for this period as well as medical expenses and attorney's fees. EBC declined to accept his claim, contending that the Claimant's osteoarthritis, need for knee replacement and loss of time from work are unrelated to his employment. After the parties were unable to arrive at a resolution during informal proceedings before the District

Director of the Department of Labor's Office of Workers' Compensation Programs ("OWCP"), the claim was referred to the Office of Administrative Law Judges ("OALJ") for formal hearing.

Pursuant to notice, a formal hearing was conducted before me in New London, Connecticut on June 29, 2004, at which time the Claimant appeared represented by counsel, and an appearance was made on behalf of EBC. The Claimant testified at the hearing, and documentary evidence was admitted without objection as Claimant's Exhibits ("CX") 1-5 and EBC Exhibits ("EX") 1-3 and 6-10. Hearing Transcript ("TR") 11, 17.[1] Stipulations were offered as Joint Exhibit ("JX") 1. TR 10. At the close of the hearing, EBC's unopposed motion to hold the record open for offering the transcript of a post-hearing deposition of its medical expert, Dr. Froehlich, was granted. Dr. Froehlich's deposition, which had originally been scheduled for August 4, 2004, was subsequently postponed, and EBC was granted two extensions of time in which to offer his testimony. EBC was unsuccessful in its efforts to reschedule Dr. Froehlich's deposition, and it notified the Court that it was withdrawing request to hold the record open. By order issued on December 17, 2004, the record was closed.

After consideration of the evidence and the parties' positions, I conclude that the Claimant's left knee condition is causally related to his employment at EBC. Accordingly, I will award him temporary total disability compensation for the period in which he was unable to work following joint replacement surgery, interest on unpaid compensation, medical care and attorney's fees. My findings of fact and conclusions of law are set forth below.

II. Findings of Fact and Conclusions of Law

A. Stipulations and Issue Presented

The parties offered the following stipulations at the hearing (1) the LHWCA applies to this claim; (2) the Claimant alleges that he sustained an injury on February 24, 2003 in North Kingstown, Rhode Island; (3) there was an employer-employee relationship between EBC and the Claimant at the time of the alleged injury; (4) EBC filed a timely notice of controversion; (5) the informal conference was held on December 17, 2003; (6) the Claimant's average weekly wage at the time of the injury was $1,137.75; (7) no compensation or medical benefits have been paid; (8) the Claimant was under a temporary total disability from March 21, 2003 until September 21, 2003; (9) the Claimant returned to his usual employment as a tool room attendant on September 21, 2003. JX 1. The parties also agreed that the issues to be adjudicated are: (1) whether the Claimant's need for left knee replacement surgery is causally related to his employment at EBC; (2) whether the Claimant gave timely notice of the alleged injury to EBC; (3) whether the claim was timely filed; and (4) whether EBC is responsible as a self-insurer for any benefits awarded to the Claimant. *Id.*

[1] The Claimant's objection to EBC Exhibits 4 and 5, a medical report and *curriculum vitae* from A. Louis Mariorenzi, M.D., was sustained, and this evidence was excluded for failure to comply with the requirements of the pre-hearing order. TR 17.

B. The Claimant's Employment and Past Injury Histories

The Claimant graduated from a vocational high school in 1964 and was hired by GD on September 7, 1967 as an electrician in the Quincy, Massachusetts shipyard. TR 22. As an electrician, he worked as a cable puller for five years. TR 23. In 1972, he was reassigned to a tool room where he repaired equipment. TR 23. He also served as a union steward and in 1984 became a tool room supervisor. TR 23-24, 31. He testified that his work as a supervisor was performed in either the tool room or aboard ships under construction where he had to climb ladders, staging and gangways. TR 24. GD closed the Quincy shipyard in 1986, and he was hired by EBC on August 12, 1986 as a welding support supervisor at EBC's Quonset Point, Rhode Island shipyard. TR 32-334.

As a welding support supervisor at Quonset Point, the Claimant was responsible for a group of employees who repaired welding equipment. TR 33. In 1990, the welding support function was merged with the rigging department, and the Claimant assumed supervisory responsibility for riggers and crane operators as well as welding support personnel. TR 33. His duties required him to climb ladders and staging on boats under construction. TR 33-34. He testified that he also did a lot of crawling in tanks. TR 35. In 1992, he underwent a partial right knee replacement and was out of work for about six months. TR 45, 69. After this recuperation period, he returned to work as a supervisor at EBC and was able to do his job. TR 45. The Claimant testified at a pre-hearing deposition that he received his regular pay while he was out of work following the right knee surgery. CX 4(A) at 63.

In November 1994, the Claimant lost his supervisory position during a reduction-in-force at Quonset Point. TR 36. Due to his electrical background, he was placed in a position as an electrician working at a bench on electrical components. TR 36-37. He described this as nice work that lasted about 18 months. TR 42. This job came to an end in May 1996 when he was laid off until November 1997. TR 42-43. While on layoff, the Claimant attended school and earned a certificate in computer technology. TR 43. He was called back to EBC in November 1997 as an electrician pulling electrical cables aboard boats. TR 43-44. He testified that he found this work difficult on his back and legs, so he applied and was selected for a tool room job in August 1998. TR 44. At that time, he was experiencing pain in both knees, and although the tool room job involved less climbing and squatting than electrical work aboard the boats, he still had to lift and carry boxes of wire weighing up to 50 pounds. TR 46-48, 50-51.

Between 1998 and 1999, the Claimant began to notice increasing problems with his left knee as well as back and hip symptoms. TR 54-55, 69. He also gained significant weight, from approximately 185-195 pounds to 260 pounds, during this period. TR 61-62, 68. He sought medical care and underwent a total left knee replacement on March 21, 2003. TR 58-59. He had aggressive physical therapy after the surgery and was able to return to work in the tool room without restrictions on September 21, 2003. TR 59-60. However, he continues to have significant knee and hip pain for which he takes medication. TR 60-61. He testified that he thought that his work activities at EBC over the years may have contributed to his left knee and hip problems, but he did not obtain a medical opinion that his work may have been contributory until January 2003 when he was seen by Dr. James Leffers who had previously operated on his right knee. TR 70-72.

The Claimant testified that his memory was poor with regard to the details of any injuries to his knees while working for GD and EBC, and he said that he had to rely on the medical records, adding that he reported all injuries on the job in accordance with company policy. TR 25-26, 73, 83-84.

GD Medical Department records show that the Claimant reported a workplace injury on May 8, 1970 when he stepped on a cable and twisted his left knee which developed pain and swelling to the point that he felt unable to continue with his regular duties. EX 10 at 65. From these records, it appears that the injury was classified as industrial by GD and that the Claimant was put off work until May 19, 1970 when he was given medical clearance to return to duty after an x-ray was read as negative, and the swelling subsided. *Id.* at 66-70. The diagnosis of the injury by GD's physician was a sprained left knee. *Id.* at 70. The Claimant testified that he recalled being put in a leg brace to immobilize his knee for a week to seven days and that "because I couldn't do any work, they put me out on the street." TR 72. He could not recall whether he received workers' compensation or was paid for the time that he was out of work. TR 73.

The GD records show that the Claimant reported another work-related injury to his left knee on December 6, 1976 when he experienced pain in the left knee after slipping because of wet shoes while descending stairs. EX 10 at 72. He was examined and found to have tenderness and swelling, for which ice pack treatment was advised, and he was returned to work without restriction. *Id.*

The Claimant reported yet another alleged work-related left knee injury on April 25, 1977 when he slipped "after lunch" while descending "the stairs of the main office building to the grievance room" and landed with his weight on his left knee. *Id.* at 73-74. He filed a LHWCA claim over this injury but indicated that he was not disabled and had received medical treatment from a physician of his choice. *Id.* GD filed a notice of controversion with the OWCP, asserting that the "disability if any did not arise out of or in the course of employment." *Id.* at 76. On May 6, 1977, he had an x-ray of the left knee which showed no acute fracture with a "boney fragment off the medial aspect of the distal femoral condyle with surrounding sclerosis and boney defect" which was described as consistent with osteoarthritis dissecans at the anteromedial aspect of the distal femoral condyle. *Id.* at 75. He also had an arthrogram which showed 2-3 cc. of serous joint effusion that was aspirated and osteochondritis dissecans of the medial femoral condyle with some cartilage thinning. *Id.*

The GD records document a fourth work-related left knee injury on July 22, 1980 when the Claimant reported that he stepped on a chain fall while carrying a ladder, causing him to slip and twist the left knee. EX 10 at 86. He was examined by a GD physician who diagnosed a possible strain and concluded that the Claimant was not disabled from his regular duties. *Id.* The Claimant was seen again on August 8, 1980 at which time he was still reporting pain and swelling although the stiffness had abated. *Id.* at 87. The GD records also show that an x-ray was taken of the left knee on November 20, 1980, but the x-ray report was not introduced in evidence. *Id.* at 89.

The parties introduced the Claimant's medical records from the EBC Quonset Point dispensary. CX 5; EX 8. There records contain several reports of incidents and treatment involving the Claimant's right knee and reports of left hip problems. The only reference to the left knee during the period of the Claimant's employment at Quonset Point is a medical report dated August 20, 1999 when the Claimant reported to the company dispensary that he had awakened during the night with swelling and stiffness in the left knee which he was unable to attribute to any fall or injury. CX 5 at 18. He was advised to apply ice and elevate his left leg, and he indicated that he could perform his regular duties in the tool room. *Id.* In February 2003, the Claimant reported injuries to both legs and knees which he attributed to repetitive trauma on hard surfaces. EX 8 at 62.

C. Threshold Issues – Timeliness of the Notice and Claim

Section 12 of the LHWCA provides that, except for cases involving an occupational disease, written notice of an injury or death must be given to the OWCP within thirty days after the date of such injury or death, or thirty days after the employee or beneficiary is aware, or in the exercise of reasonable diligence or by reason of medical advice should have been aware, of a relationship between the injury or death and the employment. 33 U.S.C. § 912(a)-(c). In this case, the Claimant's attorney filed the notice required by section 12 on March 25, 2003 which was more than 30 days after January 2003 when the Claimant testified that he received a medical opinion that his left knee condition might be related to his employment. CX 1 at 4. However, section 12(d) provides that failure to give the required notice will not bar a claim if the employer of its insurance carrier had actual knowledge of the injury or death, if it is determined that the employer or carrier has not been prejudiced by the failure to give notice, or if the failure to give notice is excused. 33 U.S.C. § 912(d). Pursuant to section 20(b) of the LHWCA, it is presumed, in the absence of substantial evidence to the contrary, that an employer has been given sufficient notice pursuant to section 12. 33 U.S.C. § 920(b); *Shaller v. Cramp Shipbuilding & Dry Dock Co*., 23 BRBS 140, 145-146 (1989); *Stevenson v. Linens of the Week*, 688 F.2d 93, 97-98 (D.C. Cir. 1982); *Avondale Shipyards v. Vinson*, 623 F.2d 1117, 1120 (5th Cir. 1980); *United Brands Co. v. Melson*, 594 F.2d 1068, 1072 (5th Cir. 1979); *Duluth, Missabee & Iron Range Ry. Co. v. U.S. Dep't of Labor*, 553 F.2d 1144, 1148 (8th Cir. 1977). Thus, an employer bears the burden of coming forward with substantial evidence that it has been unable to effectively investigate some aspect of the claim due to the claimant's failure to provide adequate notice. *Bivens v. Newport News Shipbuilding & Dry Dock Co.*, 23 BRBS 233, 240 (1990). *See also Strachan Shipping Co. v. Davis*, 571 F.2d 968, 972 (5th Cir. 1978); *Sun Shipbuilding & Dry Dock Co. v. Bowman*, 507 F.2d 146, 152 (3rd Cir. 1975). Here, EBC has offered no evidence or argument that it has been prevented from investigating any aspect of the claim due to the Claimant's alleged failure to give timely notice. Accordingly, I find that EBC has not successfully rebutted the presumption that it received sufficient notice of the claimed injury.

Section 13(a) of the LHWCA bars a claim for compensation unless it is filed within one year of the injury or death or, in cases where there has been a voluntary payment of compensation, within one year after the date of the last payment. 33 U.S.C. § 913(a). Section 13(a) further provides that "the time for filing a claim shall not begin to run until the employee or beneficiary is aware, or by the exercise of reasonable diligence should have been aware, of the relationship between the injury or death and the employment." *Id.* Since it is presumed pursuant

to section 20(b) that sufficient notice of a claim has been given, the burden falls on EBC to demonstrate that the claim was filed more than one year after the date on which the Claimant became aware, or by the exercise of reasonable diligence should have been aware, of the relationship between his back injury and his employment. *See Horton v. General Dynamics Corp*., 20 BRBS 99, 102 (1987). In determining when an employee has the requisite awareness, the courts have unanimously held that the filing limitation period in section 13(a) begins to run "only after the employee becomes aware or reasonably should have become aware of the full character, extent, and impact of the injury" and they have "generally have held that the employee is aware of the full character, extent, and impact of the injury when the employee knows or should know that the injury is work related, and knows or should know that the injury will impair the employee's earning power." *Paducah Marine Ways v. Thompson*, 82 F.3d 130, 134 (6th Cir. 1996), citing *Abel v. Director, Office of Workers Compensation Programs*, 932 F.2d 819, 821 (9th Cir.1991). *See also Newport News Shipbuilding & Dry Dock Co. v. Parker*, 935 F.2d 20, 27 (4th Cir.1991); *Brown v. ITT/Continental Baking Co*., 921 F.2d 289, 294-295 (D.C.Cir.1990); *J.M. Martinac Shipbuilding v. Director, Office of Workers' Compensation Programs*, 900 F.2d 180, 183 (9th Cir.1990); Brown v. Jacksonville Shipyards, Inc., 893 F.2d 294, 296 (11th Cir.1990); *Bechtel Associates, P.C. v. Sweeney*, 834 F.2d 1029, 1033 (D.C.Cir.1987); *Marathon Oil Co. v. Lunsford*, 733 F.2d 1139, 1141-1142 (5th Cir.1984). The claim in this case was filed on March 25, 2003. CX 1 at 2. Since EBC has offered no evidence to contradict the Claimant's testimony that he did not receive any medical opinion prior to January 2003 connecting his knee condition to his employment, I find that it has not rebutted the presumption that the claim was timely filed.

D. Causation

Section 20(a) of the LHWCA provides a presumption that a claim comes within its provisions. 33 U.S.C. § 920(a). The section 20 presumption ""applies as much to the nexus between an employee's malady and his employment activities as it does to any other aspect of a claim." *Swinton v. J. Frank Kelly, Inc.*, 554 F.2d 1075, 1082 (D.C. Cir. 1976), *cert. denied*, 429 U.S. 820 (1976). To invoke the presumption, there must be a *prima facie* claim for compensation, to which the statutory presumption refers; that is, a claim "must at least allege an injury that arose in the course of employment as well as out of employment." *U.S. Industries/Federal Sheet Metal, Inc., et al., v. Director, OWCP*, 455 U.S. 608, 615 (1982). As discussed above, the Claimant has alleged that his left knee condition was caused by the repetitive trauma of being exposed to hard surfaces in the course of his employment. In support of his claim he has introduced medical opinions from two treating physicians, Drs. Leffers and Mabie.

In a letter dated October 21, 2003, James Leffers, M.D. stated that he was unable to identify what caused the Claimant's arthritis which led to his need for knee replacement. CX 2 at 8. However, he further stated, "I can tell you in all likelihood his employment contributed to the demise and accelerated the degenerative problems of all his joints in his lower extremities that are affected currently." *Id.* Dr. Leffers was unable to quantify the degree of occupational contribution. *Id.*

Kevin Mabie, M.D., who performed the total joint replacement procedure on the Claimant's left knee, provided the following opinion in a November 6, 2003 letter to the Claimant's attorney:

> As you suggest, the causal relationship for joint replacement is problematic. This said, it is my opinion with a reasonable degree of medical certainty, that the nature of the occupational activities that Mr. Valeriana was engaged in contributed to and accelerated the degenerative arthritis, which he developed in his right knee. The development and acceleration of osteoarthritis due to his occupational exposure contributed to his eventual need for total knee replacement, which was done on the above date.

CX 2 at 9. Dr. Mabie testified a deposition that the Claimant's left knee had severe osteoarthritis which he described as the most common type of arthritic change and "basically a wear-and-tear type arthritis where the articular cartilage gets worn away and the bone thins and basically wears away so there's no more cushion in the joint." TR 6-7. He said that osteoarthritis is "multifactorial" in origin, and he identified trauma, genetics, weight and bad luck as some of the factors. *Id.* at 9. He explained that weight is a factor because it increases force across the joint, and he said that the Claimant at 65 inches and 250 pounds is "heavier than his height would allow." *Id.* at 9-10. He further testified that trauma involving intra-articular injury such as an intra-articular fracture or previous surgery for meniscal tears are factors because such injuries disrupt the normal mechanics of the knee. *Id.* at 12. Dr. Mabie was asked about the basis for his opinion that the Claimant's occupational activities contributed to his osteoarthritis and need for total knee replacement, and he testified that it was his understanding that the Claimant had worked as a "tool man" as well as a number of other jobs in the course of his employment at GD and EBC. *Id.* at 10-12. On cross-examination, Dr. Mabie agreed that osteoarthritis is a fairly common condition for a man of the Claimant's age, size and weight, and he said that there was no pathology in the Claimant's left knee other than his osteoarthritis. *Id.* at 22. Finally, Dr. Mabie testified on redirect examination that a person with significant degenerative changes in the knee joint can aggravate the condition to the point of requiring knee replacement simply by standing and walking which puts greater weight on the joint. *Id.* at 25-26. Dr. Mabie has been a board-certified orthopedic surgeon since 1986, and he estimated that he has performed 800 to 1,000 knee replacement procedures. *Id.* at 4, 9, 21.

Based on this evidence, I find that the Claimant has satisfied his *prima facie* burden of establishing that he sustained physical harm and that conditions existed at his place of employment which could have caused or aggravated the harm. *See Kelaita v. Triple A. Machine Shop*, 13 BRBS 326, 331 (1981). Since the Claimant has made the requisite *prima facie* showing of harm or pain and the existence of working conditions which could have caused or aggravated the harm or pain, EBC must overcome the force of the presumption by producing substantial evidence severing the presumed connection between the Claimant's knee condition and his working conditions. *DelVecchio v. Bowers*, 296 U.S. 280, 286-287 (1935); *Volpe v. Northeast Marine Terminals*, 671 F.2d 697, 701 (2d Cir. 1981). Evidence is substantial if it is the kind that a reasonable mind might accept as adequate to support a conclusion. *Richardson v. Perales*, 402 U.S. 389, 401 (1971). Under the substantial evidence standard, an employer need not establish another agency of causation to rebut the presumption; it is sufficient if a physician unequivocally

states to a reasonable degree of medical certainty that the harm suffered by the worker is not related to employment. *O'Kelley v. Dept. of the Army/NAF*, 34 BRBS 39, 41-42 (2000). *See also Ortco Contractors, Inc. v. Charpentier*, 332 F.3d 283, 289 (5th Cir. 2003) (rejecting requirement that an employer "rule out" causation or submit "unequivocal" or "specific and comprehensive" evidence to rebut the presumption and reaffirming that "the evidentiary standard for rebutting the '§ 20(a) presumption is the minimal requirement that an employer submit only substantial evidence to contrary").

EBC's rebuttal evidence consists of a medical report from John A. Froehlich. M.D. who examined the Claimant in June 2004 subsequent to his total knee replacement surgery. EX 3.[2] Dr. Froehlich stated that he reviewed a prior examination that he had performed as well as the Claimant's medical records and his testimony at a deposition. *Id.* at 1. He also interviewed the Claimant and reported that the Claimant "remembers one injury to his left knee and could not remember any injury to his left hip." *Id.* Dr. Froehlich did not describe this injury or mention any of the left knee injuries documented in the GD medical records.[3] Based on his review of the medical evidence and the information provided by the Claimant, Dr. Froehlich stated that it is his opinion that the Claimant's "degenerative arthritis to his knees and left hip are not related to any particular work injury or to his general work environment, employment and typical duties." *Id.* at 2. He said that degenerative arthritis is both an age related phenomenon and multifactorial, and he added that the Claimant's heavier weight may have played a role in the development of his arthritis. *Id.* Dr. Froelich has been a board-certified orthopedic surgeon since 1985, and he an assistant clinical professor of medicine at the Brown University School of Medicine, Division of Sports Medicine and Reconstructive Surgery. EX 2.

I find that Dr. Froehlich's medical opinion clearly qualifies as substantial enough evidence to rebut the presumption of a causal relationship between the Claimant's left knee condition and his employment. Consequently, the presumption "falls out" of the case, and the Claimant bears the burden of establishing causation based on the record as a whole. *Del Vecchio*, 296 U.S. at 286-287. In weighing the conflicting medical opinions, I note that Drs. Mabie and Froehlich have essential identical qualifications and experience. Dr. Froehlich is a medical school professor and has an impressive body of research and publications in his *curriculum vitae*, but Dr. Mabie has the advantage of having treated the Claimant and examined him on multiple occasions which entitles his opinions to at least some deference. *See Pietrunti v. Director, OWCP*, 119 F.3d 1035, 1042 (2nd Cir. 1997) (opinion of a treating physician entitled to considerable weight); *Rivera v. Harris*, 623 F.2d 212, 216 (2nd Cir. 1980) (same). *See also*

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[2] EBC also introduced, over the Claimant's relevancy objection, a medical report from Philo F. Willetts, M.D. who evaluated the Claimant's upper extremities at the request of his attorney. EX 6. In his listing of the Claimant's diagnoses, Dr. Willetts included "Unrelated knee pathology – status post recent total knee replacement." *Id.* at 7. EBC interprets this diagnosis as a medical opinion that the Claimant's left knee condition is unrelated to his employment. TR 13. I decline to adopt this interpretation since the term "unrelated" is at best ambiguous and more likely than not simply reflects Dr. Willetts' opinion that the Claimant's knee pathology is unrelated to the shoulder problems which were the focus of his evaluation.

[3] It is unclear what medical records were reviewed by Dr. Froehlich, though it appears from his fairly detailed discussion of "dispensary notes" between 1987 and 2003 and the absence of any reference to records earlier than 1986, that he did not review the GD medical records. It is also unclear whether Dr. Mabie or Dr. Leffers reviewed the GD records.

Amos v. Director, OWCP, 153 F. 3d 1051, 1054 (9th Cir. 1998), *amended* 164 F.3d 480 (1999), *cert. denied sub nom Sea-Land Service, Inc. v. Director, OWCP*, 528 U.S. 809 (1999); *Morehead Marine Services, Inc. v. Washnock*, 135 F.3d 366, 371 (6th Cir. 1998). While neither physician's conclusions are particularly well elucidated, I am persuaded after considering the record as a whole that the opinions from Drs. Mabie and Leffers are better supported by the objective evidence. First, there is the uncontradicted evidence that the Claimant suffered a series of work-related traumatic injuries to his left knee during the course of his employment at the GD Quincy shipyard, including at least one injury that was sufficiently severe to put the Claimant out of work for a week and another that required aspiration of fluid. Second, Dr. Froehlich, like Dr. Mabie, implicated the Claimant's weight as a contributory factor, but he was either unaware of or chose to ignore the fact established by this record that the Claimant's increased weight is a relatively recent event that occurred subsequent to the onset of left knee symptoms. Dr. Froehlich also did not reconcile his comments about the Claimant's body weight with the fact that his employment at GD and EBC involved periods of heavy physical labor and the fact that his most recent duties in the tool room required him to carry boxes weighing up to 50 pounds. If extra body weight aggravates or accelerates osteoarthritis by placing additional force on the knee joint, as posited by Drs. Froehlich and Mabie, it seems reasonable to conclude, as Dr. Mabie has, that the Claimant's work activities at EBC, which included carrying heavy weights, similarly aggravated or accelerated his osteoarthritis and ultimate need for total joint replacement. While it may well be that the Claimant's osteoarthritis has a non-occupational genesis, the subsequent contribution of workplace factors is enough to render the entire injury compensable under the LHWCA's aggravation doctrine which provides that "[w]here an employment injury worsens or combines with a pre-existing impairment to produce a disability greater than that which would have resulted from the employment injury alone, the entire resulting disability is compensable." *New Haven Terminal Corp v. Lake*, 337 F.3d 261, 268 (2d Cir. 2003), quoting *Director, Office of Workers' Comp. Programs v. General Dynamics Corp*, 900 F.2d 506, 508 (2d Cir.1990), *overruled, in part, on other grounds by Director, Office of Workers' Comp. Programs v. General Dynamics Corp*., 982 F.2d 790, 792-93 (2d Cir.1992). For these reasons, I credit the opinions of Drs. Leffers and Mabie and consequently find that the Claimant has met his burden of proving that his left knee condition and need for joint replacement surgery are causally related to his employment at EBC.

E. Responsible Carrier

In a pre-hearing motion to enlarge the time for offering evidence, EBC raised an issue regarding the potential liability of a third party insurance carrier which provided workers' compensation coverage to GD during portions of the Claimant's employment. Administrative Law Judge Exhibit 18. However, at the hearing, EBC acknowledged that there was an insufficient evidentiary basis for joining the carrier, and it has not offered any additional evidence or argument to support imposition of liability on any other party. TR 7-9. Since the burden of establishing another party's liability falls on the party seeking to avoid liability, I find that EBC has not proved its responsible carrier defense and that it is liable for any benefits awarded to the Claimant. *See generally Buchanan v. International Transportation Services*, 31 BRBS 81, 84 (1997).

F. Benefits Due

The parties have stipulated that the Claimant was under a temporary total disability from March 21, 2003 until September 21, 2003. Accordingly, I find that he is entitled to an award of temporary total disability compensation pursuant to section 8(b) of the LHWCA at the weekly rate of $758.50 (two-thirds of the stipulated average weekly wage) from March 21, 2003 through September 21, 2003. 33 U.S.C. § 908(b). Additionally, the Claimant is entitled to interest on any compensation payments that were not timely made. *See Foundation Constructors v. Director, OWCP*, 950 F.2d 621, 625 (9th Cir.1991) (noting that "a dollar tomorrow is not worth as much as a dollar today" in authorizing interest awards as consistent with the remedial purposes of the Act). *See also Quave v. Progress Marine*, 912 F.2d 798, 801 (5th Cir.1990), *reh'g denied* 921 F. 2d 273 (1990), *cert. denied*, 500 U.S. 916 (1991). The appropriate interest rate shall be determined pursuant to 28 U.S.C. § 1961 (2003) as of the filing date of this Decision and Order with the District Director.

Since I have determined that the Claimant's left knee condition and total joint replacement surgery are causally related to his employment, EBC is liable pursuant to section 7 of the LHWCA for all necessary and reasonable medical care. *Potenza v. United Terminals, Inc*., 524 F.2d 1136, 1137 (2d Cir. 1975).

Finally, I conclude that the Claimant, having utilized an attorney to successfully establish his right to additional compensation, is entitled to an award of attorneys' fees under section 28 of the LHWCA. *See American Stevedores v. Salzano*, 538 F.2d 933, 937 (2nd Cir. 1976). In my order, I will allow the Claimant's attorney 30 days from the date this Decision and order is filed with the District Director to file a fully supported and fully itemized fee petition as required by 20 C.F.R. § 702.132 (2004), and the EBC will be granted 15 days from the filing of the fee petition to file any objection.

III. Order

Based upon the foregoing Findings of Fact and Conclusions of Law, and upon the entire record, the following compensation order is entered:

1. The Electric Boat Corporation as a self-insured employer shall pay to the Claimant Richard Valeriana temporary total disability compensation pursuant to 33 U.S.C. § 908(b) from March 21, 2003 through September 21, 2003 at the rate of $758.50 per week, plus interest on all past due compensation, computed from the date each payment was originally due until paid, and the appropriate rate shall be determined pursuant to 28 U.S.C. § 1961 (2003) as of the filing date of this Decision and Order with the District Director;

2. Electric Boat Corporation shall provide all reasonable and necessary medical care pursuant to 33 U.S.C. § 907 for Richard Valeriana's compensable left knee osteoarthritis;

3. The Claimant's attorney shall have 30 days from the date of this order in which to file an application for attorney's fees, and Electric Boat Corporation shall have 15 days from the date of service of the application to file any objection; and

4. All computations of benefits and other calculations which may be provided for in this Order are subject to verification and adjustment by the District Director.

SO ORDERED.

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DANIEL F. SUTTON
Administrative Law Judge

Boston, Massachusetts